

BRAZIL

TRADE SUMMARY

In 2000, the U.S. trade surplus with Brazil was \$1.5 billion, a decrease of \$431 million from the U.S. trade surplus of \$1.9 billion in 1999. The Brazilian currency, the Real, devalued and moved to a floating exchange rate regime in January 1999. U.S. merchandise exports to Brazil in 2000 were \$15.4 billion, an increase of \$2.1 billion (15.9 percent) from the level of U.S. exports to Brazil in 1999. Brazil was the United States' 12th largest export market in 2000. U.S. imports from Brazil were \$13.9 billion in 2000, an increase of \$2.5 billion (22.5 percent) from the level of imports in 1999.

U.S. exports of private commercial services (i.e. excluding military and government) to Brazil were \$5.5 billion in 1999, and U.S. imports were \$1.8 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$10 billion in 1998, while sales of services in the United States by majority Brazilian-owned firms were \$111 million.

The stock of U.S. Foreign Direct Investment (FDI) in Brazil in 1999 was approximately \$35 billion, a decrease of 8.4 percent from the level of FDI in 1998. U.S. FDI in Brazil is concentrated largely in the manufacturing, finance and banking sectors.

IMPORT POLICIES

Tariffs

In 2000, Brazil's average applied tariff was 13.7 percent. Brazil currently maintains no applied tariff rates in excess of 35 percent, but does have safeguard measures in place for some imports, such as toys. A number of imports are prohibited, including various used goods such as machinery, automobiles, clothing, and other consumer goods.

Brazil and its MERCOSUR partners, Argentina, Paraguay and Uruguay, implemented the MERCOSUR Common External Tariff (CET) on January 1, 1995. The CET covers approximately 85 percent of 9,371 tariff items. Most of the remaining 15 percent should be covered during 2001, and full coverage should be reached by 2006. Current exceptions to the CET include sugar, automobiles and parts, capital goods, informatics, and telecommunication goods. By the year 2006, the maximum rates will be 14 percent for capital goods and 16 percent for informatics and telecommunication goods.

As of mid-2000, virtually all imports from MERCOSUR entered Brazil duty-free with the notable exceptions of sugar and automobiles and parts. The year 2000 marked a rebuilding year for MERCOSUR following bilateral trade tensions in 1999 generated by Brazil's devaluation of the Real. MERCOSUR closed 2000 with a Presidential-level meeting in Brazil that reaffirmed the leaders' commitment to progress and unity in MERCOSUR and the region. As a result, MERCOSUR members reached agreements on a MERCOSUR automobile regime and coordination of macroeconomic policies.

In November 1997, after consulting with its MERCOSUR neighbors, Brazil implemented

a temporary three-percentage point increase on virtually all tariff items, both inside and outside the CET. The tariff increases also affected most capital goods, which constitute over half of U.S. exports to Brazil. However, under its "ex-tarifio" regime, Brazil exempted capital goods not available domestically. This reduced tariffs from as high as 20 percent on those items down to 5 percent. Although Brazil had agreed with other MERCOSUR members to end the temporary three-percentage point increase beginning January 2001, a more modest half a percent decrease was agreed to at the December 2000 MERCOSUR summit. The remaining 2.5 percent is to be reduced within the next two years. On December 27, 2000, Brazil reduced the tariffs on an additional 414 capital good items, without national equivalents, from 18 percent to 4 percent, and placed these items on the ex-tarifario list. The Government also reduced tariffs from 5 percent to 4 percent on the other 1,370 items included on the ex-tarifario list.

Import Licensing/Customs Valuation

In January 1997, the Secretariat of Foreign Trade

(SECEX) implemented a computerized trade documentation system (SISCOMEX) to handle import licensing, and a wide variety of products are subject to non-automatic licensing. There are fees assessed per import statement submitted through SISCOMEX, and importers must comply with onerous registration guidelines, including a minimum capital requirement, to register with SECEX. Complete information on requirements for importing into Brazil is available only through SISCOMEX, and such information is only available to registered importers. Beginning in October 1998, Brazil issued a series of administrative measures that required additional sanitary/phytosanitary (SPS), quality and safety approvals from various government entities for products subject to nonautomatic licenses.

A primary concern has been the use of reference prices as a minimum valuation for certain imported products. It appears that the Government of Brazil is requiring some products to meet minimum prices for the issuance of import licenses. In addition, imports falling below set price levels may be sent to what is known as the "gray line" for enhanced customs scrutiny. This process is opaque and burdens U.S. exports, particularly in the textile, steel and forestry sectors. In November 1999 the United States actively participated as an interested third party in European WTO consultations on the issue, and in July 2000 the United States held its own WTO consultations with Brazil. The Brazilian Government reportedly has modified its customs regime somewhat, but it has not codified these changes in a publicly available document.

In addition, product registrations from the Ministry of Health are required for imported processed food products and food supplement products and as of March 1, 2000, the term of validity for registrations was shortened. Registration fees for these imports, as well as for medical and pharmaceutical products, have increased significantly. The U.S. Government also has received complaints relating to Brazilian practices that lead to non-transparent preferences for Brazilian products in procurement bids for government and nonprofit hospitals and leads to bias against the import of refurbished medical equipment when domestically-produced "similar" exist. Implementation of such import measures continues to have a negative impact on U.S. exports, especially in light of the

high tariffs on medical equipment.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Progress has been made in the area of SPS measures, illustrated by Brazil's authorization of hard red winter wheat imports from the United States in 1998. Brazil also lifted long-standing restrictions on the importation of U.S. soft red winter wheat and hard red spring wheat from U.S. non-west coast ports in November 2000.

Subsequently, Brazil reimposed the restrictions, due to alleged SPS problems. The U.S. Government will continue to work to resolve import restrictions on shipments of U.S. wheat out of west coast ports. Despite progress, SPS measures remain significant barriers in many cases, in part driven by Brazil's implementation of the harmonized phytosanitary standards of the Southern Cone Phytosanitary Committee (COSAVE).

Brazil prohibits the entry of poultry and poultry products from the United States, alleging lack of reciprocity. The issue, however, should not be reciprocity, but rather the fulfillment of WTO obligations regarding sanitary and phytosanitary decisions, which dictate that such determinations shall be based only upon sufficient scientific evidence. Brazil also bans the importation of beef produced with growth hormones; however, beef imports from the United States have been allowed on a waiver basis since 1991.

Biotechnology

The biotechnology debate in Brazil has escalated dramatically during the last two years as the Brazilian Government was ready to approve the first commercial planting of Roundup Ready soybeans. Brazil has an approval process for bio-genetically altered agricultural products which resulted in the approval of Roundup Ready soybeans in 1998. However, the Brazilian government subsequently suspended its approval in response to a court ruling, citing the need for environmental impact studies on the product. To date, the Brazilian Government has yet to re-approve Roundup Ready soybeans for use on the Brazilian market, while the issue remains in the courts. Also, during the past year, the United States lost several opportunities to sell corn to Brazil because of the lack of government approval for imports of biotechnology products and the ensuing court battles against imports of biotechnology products. Brazilian policy on biotech remains inconsistent and lacks transparency.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the WTO Agreement on Government Procurement. Generally, transparency in the procurement process could be improved. Limitations on foreign capital participation in procurement bids can reportedly impair access for potential service providers, including in the energy and construction sectors. Brazilian federal, state and municipal governments, as well as related agencies and companies, follow a "buy national" policy, and rules permit the government to provide preferential treatment in government procurement decisions to foreign companies with production facilities in Brazil. However, Brazil permits foreign companies to compete in procurement-related multilateral development bank loans and opens selected procurement to international tenders.

To the extent that the privatization program in Brazil continues and non-discriminatory policies are adopted, U.S. firms will have greater opportunities in Brazil. To illustrate, in 1998 when the Government of Brazil reviewed fiber optic products solely on their merits, U.S. fiber optic cable was certified for sale in Brazil.

Law 8666 of 1993, covering most government procurement other than informatics and telecommunications, requires nondiscriminatory treatment for all bidders, regardless of the nationality or origin of product or service. However, the law's implementing regulations allow consideration of non-price factors, give preferences to certain goods produced in Brazil and stipulate local content requirements for eligibility for fiscal benefits. Decree 1070 of March 1994, which regulates the procurement of informatics and telecommunications goods and services, requires federal agencies and parastatal entities to give preference to locally-produced computer products based on a complicated and non-transparent price/technology matrix.

EXPORT SUBSIDIES

The Government of Brazil offers a variety of tax and tariff incentives to encourage production for export and the use of Brazilian inputs in exported products. Several of these programs have been found to be countervailable under U.S. law in the context of specific countervailing duty cases. Exporters enjoy exemption from withholding tax for remittances overseas for loan payments and marketing, as well as from the financial operations tax for deposit receipts on export products. The Government of Brazil has proposed tax reform, which would shift from a production-based/movement regime to a retail sale value-added tax, thus potentially modifying some of these incentives significantly. In addition, Brazil is under pressure to remove these subsidies for exports destined for MERCOSUR, especially in light of the Real devaluation. The IMF has also indicated an interest in eliminating some of Brazil's export subsidies.

An export credit program known as PROEX was established in 1991. PROEX is intended to equalize domestic and international interest rates for export financing and to directly finance production of tradable goods. Revisions to PROEX were announced most recently in 1999, expanding the program. In 2000, roughly \$944 million was budgeted for PROEX, with \$499 million slated for equalization and \$445 million for direct financing. Through October 2000, \$207 million was spent on equalization while \$277 million was spent on financing. Historically, PROEX has never used more than 30 percent of its allocated budget, but in 1998 utilized over 50 percent of its allocated resources for the first time, and around 70 percent in 1999.

In 1999, a WTO panel found PROEX interest equalization payments used to finance the sale of regional aircraft manufactured in Brazil to be a prohibited export subsidy. The WTO Appellate Body upheld this finding. The Government of Brazil states that it has modified PROEX so as to bring it into conformity with WTO subsidy rules, but Canada has challenged this position in the WTO. The United States intervened in this challenge as a third party and also has expressed some concerns about the adequacy of Brazil's implementation of the panel's findings.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Patents and Trademarks

Brazil's industrial property law, covering patents and trademarks, took effect in May 1997. The law improved most aspects of Brazil's industrial property regime, providing patent protection for pharmaceutical products and processes, agrochemical products and other inventions. However, some problems remain, such as the TRIPS-inconsistent provision that prohibits importation as a means of satisfying the requirement that the patent be "worked" in that country. The United States and Brazil held WTO consultations on this issue on June 29, 2000 and on December 1, 2000, but failed to reach a mutually satisfactory resolution of the matter. On January 8, 2000, the U.S. Government requested the establishment of a WTO dispute settlement panel and on February 1 a panel was established.

The Government of Brazil submitted a bill to the Congress in 2000 that would bring the data confidentiality portions of the industrial property law fully in line with TRIPS. On December 30, 1999, the Brazilian Government issued a provisional measure that includes some problematic provisions, including a requirement for Health Ministry approval prior to the issuance of a pharmaceutical patent. This would appear to conflict with Article 27 of the TRIPS Agreement, and U.S. officials have raised this concern with their Brazilian counterparts.

"Pipeline" protection is provided for inventions not previously patentable in Brazil because of limitations on patentable subject matter, if these inventions were patented in another country and not marketed in Brazil. While Brazil's patent office, the National Institute for Industrial Property (INPI), is addressing its backlog of both pipeline and regular patent applications, the resources and support necessary to effectively and consistently manage the processing of patent applications have been lacking. The Brazilian Government, however, has begun to computerize the patent and trademark offices.

The 1997 industrial property law also added provisions for the protection of "well-known" trademarks, but contains a long list of categories of marks that are not registrable. U.S. industry has expressed concern with the continued high level of counterfeiting in Brazil.

A law on the protection of layout designs of integrated circuits (required by TRIPS), introduced in April 1996, has not been enacted. The Government of Brazil reportedly intends to submit new legislation on integrated circuits in order to meet Brazil's TRIPS obligations in this area.

Copyrights

A copyright bill that included amendments to bring Brazil into compliance with the Berne Convention and TRIPS was signed by President Cardoso in February 1998. A software law was signed by President Cardoso that same month, thus protecting computer programs as "literary works," increasing the term of protection to 50 years, and making software infringement a fiscal and an intellectual property crime.

Copyright enforcement in Brazil continues to be uneven, and losses from piracy

significant. As a result of this concern, on January 10, 2001, the U.S. Government accepted a petition, submitted by the International Intellectual Property Alliance, to review the GSP status of Brazil. The U.S. industry reports that in 2000 its trade losses from copyright piracy in Brazil were over \$800 million, the largest amount of losses due to copyright piracy in the hemisphere. Problems have been particularly acute with respect to sound recordings and videocassettes, and virtually all audio cassettes sold are pirated copies. Brazil accounts for over half of the sales market for sound recordings in Latin America and is the largest market for videos in the hemisphere. Vigorous industry anti-piracy campaigns have had a positive impact and general awareness among the populace has increased significantly. However, efforts in 2000 resulted in many prosecutions but few convictions of intellectual property rights violators. While anti-piracy actions in 2000 resulted in several large seizures of pirated CDs, the sound recording industry estimates that the piracy rate for CDs in 2000 was between 30 to 40 percent. The Brazilian Congress is examining a bill submitted by the Executive Branch to review the criminal sanctions on copyright infringement and provide a better legal framework in this area.

Much pirated material continues to enter Brazil from across the border in Paraguay. The Federal Government of Brazil to date has not given police adequate tools or training to effectively enforce the law. Further, the penal code should be amended to provide higher fines that create a true deterrent to infringement, increase the effectiveness of the criminal enforcement system and decrease delays in the judicial process. The generally inefficient nature of Brazil's courts and judicial system has complicated the enforcement of intellectual property rights. The Brazilian Government is working to streamline the judicial process. The Government is also reportedly working to create an interagency IPR committee, coordinated by the Ministry of Justice, to improve anti-piracy enforcement, although there was no progress in this regard in 2000.

Brazil has not yet ratified the WIPO Treaties on Copyright and Performances and Phonograms.

SERVICES BARRIERS

In July 2000, Brazil informed the WTO Council on Trade in Services of its decision not to ratify the WTO Basic Telecommunications Agreement, formally known as the Fourth Protocol to the General Agreement on Trade in Services (GATS), and submitted a new schedule of commitments for consideration. Brazil also has not ratified the WTO Financial Services Agreement, formally known as the Fifth Protocol to the GATS, which is necessary to bring Brazil's commitments under the Agreement into force. The Financial Services Agreement is currently being discussed in the Brazilian Congress.

U.S. service exports to Brazil are impeded by restrictive investment laws, lack of transparency in administrative procedures, legal and administrative restrictions on remittances and sometimes arbitrary application of regulations.

Service trade opportunities in some sectors have been affected by limitations on foreign capital participation.

Telecommunications

Brazil's telecommunications sector has undergone significant liberalization in the past few years, although some limits remain on the level of foreign ownership. This liberalization is not reflected in Brazil's GATS commitments. For example, the 1996 law opening cellular telephone service to foreign operators requires Brazilian majority ownership (51 percent) of any company or consortium providing telecommunications services in Brazil. The state-owned telephone system (Telebras) was sold in July 1998, with significant foreign participation. This privatization has presented regulatory challenges. ANATEL, the independent regulator, is still in the process of developing a new quality certification program. In addition, Brazil plans to limit competition with Embratel, the long distance and international carrier, to a duopoly arrangement until January 1, 2002.

Brazil maintains an array of practices designed to favor public procurement of domestic over imported telecommunications equipment. This system of preferences includes "equivalence provisions" that require service providers to give priority to Brazilian products and a tax program subsidizing domestics. As the telecommunications services sector becomes more competitive under Brazil's new telecommunications law, it is unclear whether discriminatory equipment procurement practices will remain viable. These policies disadvantage public sector entities by imposing higher equipment costs upon them than private sector service providers.

Brazil has not yet implemented its original WTO basic telecom commitments. Instead, in July 2000, it proposed new commitments. Although these new commitments improve upon Brazil's previous offer, the United States still has some significant concerns with proposed limitations on foreign investment in the telecom sector.

Maritime

The United States and Brazil signed in early October 1999 a newly-revised bilateral Maritime Agreement, effectively ending a period of tension generated over misunderstandings relating to preferences afforded to selected classes of cargo. The new agreement must still be ratified by the Brazilian Congress. Brazilian naval authorities attempted to collect lighthouse dues in 2000 from flagships of countries, such as the U.S., with bilateral maritime agreements with Brazil, even though these dues were in violation of these agreements.

Audio Visual Services

Brazil has a requirement that 100 percent of all films and television shows be printed locally. Importation of color prints for the theatrical and television markets is prohibited. Further, a theatrical screen quota for local films is maintained at 49 days per calendar year. Potential quotas of domestic titles for video retailers and distributors, along with mandated local content requirements for cable television programming, are other potential burdens on commerce. On March 17, 1999, a bill was introduced that proposes a 5 percent tax on the box office admissions of foreign films, the proceeds of which would be used to finance the Brazilian film industry. The United States believes

development of an even stronger Brazilian film industry is an admirable objective, but not if it comes at the expense of foreign film distributors. Another problematic bill was introduced that would increase the withholding tax on remittances of funds generated by foreign audiovisual works.

Express Delivery Services

Brazil does not allow the use of electronically produced air waybills, preventing use of certain kinds of software for express shipments and slowing the customs processing of critical "Just-in-time" shipments.

Insurance

Brazil is South America's largest potential insurance market, and premiums have grown rapidly in recent years. In 1996, Brazil eliminated the distinction between foreign and domestic capital in this sector and many major U.S. firms have since entered the market, mainly via joint ventures with established companies. The Brazil Reinsurance Institute (IRB) is a monopoly equally owned by the state and government. While a 1996 constitutional reform ostensibly eliminated this monopoly requirement, private reinsurers have been precluded from operating in Brazil pending IRB privatization. Until the market is open to competition, domestic reinsurance costs remain high for both domestic and foreign insurers. The Brazilian Government's plan to privatize IRB has been delayed until 2001. New regulations governing the privatized reinsurance market still maintain preferential treatment for the IRB and other local reinsurers for two years after privatization, and are structured in such a way that will limit reinsurance options for primary insurers and create higher prices for the domestic market. In addition, the Government of Brazil denies foreign marine cargo insurers the opportunity to compete for business and requires state companies doing business with insurance brokerage firms to use 100 percent Brazilian owned brokerages.

Banking and Other Financial Services

Under the 1997 WTO Financial Services Agreement, Brazil made commitments in almost all service sub-sectors for non-insurance financial services, including banking and securities services. However, Brazil has yet to ratify this agreement. The most significant shortcoming in these commitments is that Brazil reserved the right to approve, on a case-by-case basis and subject to non-transparent criteria, all new foreign entry or expansion in the non-insurance financial services sector. In practice, Brazil generally has approved foreign service suppliers' plans to enter the market or expand existing operations, including through branching or the acquisition of troubled financial institutions. Indeed, as of September 2000, foreign owned or controlled banks accounted for 23 percent of total bank assets, and over 10 U.S. financial service suppliers had established significant operations in Brazil. In late 1999, however, the Government of Brazil announced that until it completes the privatization of eight state-owned banks, the only method of market entry or expansion allowed for foreign banks will be the purchase of one of the banks up for privatization. The Government has since

privatized three of those banks.

INVESTMENT BARRIERS

In addition to restrictions discussed above, various prohibitions limit foreign investment in internal transportation, public utilities, media and other "strategic industries."

In the auto sector, local content and incentive-based export performance requirements were introduced in 1995, but expired consistent with a bilateral auto agreement between the United States and Brazil. In December 2000, Brazil and its MERCOSUR partners reached agreement on a MERCOSUR auto regime.

Foreign ownership of land in rural areas and adjacent to national borders remains prohibited under Brazilian law. Despite investment restrictions, U.S. and other foreign firms have major investments in Brazil, with the U.S. investment stake more than doubling from 1994 to 1998. There is no Bilateral Investment Treaty between the United States and Brazil.